TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 249.

FERDINAND N. SHURTLEFF, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

(18,105.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 620.

FERDINAND N. SHURTLEFF, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition, filed November 6, 1899	1	1
Traverse, filed December 11, 1900	12	6
Finding of facts and conclusion of law, filed January 28, 1901	13	7
Opinion of the court, filed January 28, 1901	15	9
Dissenting opinion, filed January 28, 1901	16	11
Judgment of the court, January 28, 1901	17	12
Application for and allowance of appeal, March 21, 1901	18	12
Certificate of clerk	19	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 6, 1901.

1 In the Court of Claims.

FERDINAND N. SHURTLEFF
vs.
THE UNITED STATES. } No. 21524.

I.—*Petition. Filed November* 6, 1899.

Ferdinand N. Shurtleff, above named, respectfully submits this his petition to the said court, and represents:

First. That he is a citizen of the United States and is resident at No. 110 East 23rd street, in the city, county, and State of New York.

Second. That in July, 1890, he was duly selected and designated by the President of the United States as and to be one of the nine general appraisers of merchandise whose appointment is provided for and required by section 12 of the act of June 10, 1890, chapter 407 (26 Stats., 136), commonly known as "the administrative act" of that date, and that thereafter, to wit, on the seventeenth day of July, 1890, he was nominated and by and with the consent of the Senate signified July 18th, 1890, appointed such general appraiser of merchandise, and his commission, indicating his appointment to that office, was issued, dated July 22nd, 1890; that he accepted said appointment and office, was duly qualified by taking the necessary oaths on the 24th day of July, 1890, and thereafterwards entered upon the discharge of and per-

2 formed the duties of that office, and has been paid the salary attached thereto, in monthly instalments, uninterruptedly, up to the fifteenth day of May, 1899; but has not been paid the salary accruing for the residue of said month of May, 1899, amounting to the sum of three hundred and seven dollars and sixty-nine cents ($307.69); nor has he been paid his salary for the month of June, 1899, amounting to five hundred and seventy-six dollars and ninety cents ($576.90); nor for July, 1899, amounting to five hundred and eighty-nine dollars and seventy cents ($589.70); nor for August, 1899, amounting to five hundred and eighty-nine dollars and seventy cents ($589.70); nor for September, 1899, amounting to five hundred and seventy dollars and sixty cents ($570.60); nor for October, 1899, amounting to five hundred and eighty-nine dollars and seventy cents ($589.70); in the aggregate, amounting to three thousand two hundred and twenty-four dollars and twenty-nine cents ($3,224.29); all of which he claims and avers to be still due and unpaid to him, and which it is the object of this petition to recover and obtain.

Third. That about the seventeenth day of January, 1899, he received a letter of that date, addressed to him, from the Secretary of the Treasury, to this effect:

"SIR: The President deems it his duty to make some changes in the personnel of the board of general appraisers. With this in

view, he directs me to request you to submit to him your resignation, to take effect at his pleasure.

Respectfully yours, L. J. GAGE, *Secretary.*"

That on the second day of February, 1899, the petitioner
3 mailed to the said Secretary an answer to this letter, not tendering his resignation, but expressing surprise it should be requested, and asking to be informed of the nature of the charges (if any) made against him, and an investigation of any charge and to be heard thereon; that on or about the 22nd of February, 1899, he received a communication from the President of the United States, transmitted by said Secretary to the petitioner, of this tenor, to wit:

"EXECUTIVE MANSION,
WASHINGTON, D. C., *February* 21, 1899.

SIR: You are hereby removed from the office of general appraisers of merchandise, to take effect upon the appointment and qualification of your successor.

WILLIAM McKINLEY.

To Mr. Ferdinand N. Shurtleff, New York, New York.

L. J. G."

Fourth. Upon information and belief the petitioner avers that one James S. Sherman was afterwards nominated by the President and confirmed by the Senate to be a general appraiser of merchandise as alleged successor to your petitioner, but that said Sherman declined the appointment and omitted and refused to qualify for it.

Fifth. That thereafterwards, with the knowledge and assent of the President, the petitioner remained and continued in said office, discharging its duties and receiving its salary as he had theretofore done, from July, 1890, when he was appointed and qualified as aforesaid, without interruption, disturbance, or question, until the sixteenth day of May, 1899, except that on or about the fifteenth day of May, 1899, he received from the President of the United States a communication, transmitted from the Treasury Department, of this tenor:

"EXECUTIVE MANSION,
WASHINGTON, D. C., *May* 3, 1899.

4 SIR: You are hereby removed from the office of general appraiser of merchandise, to take effect upon the appointment and qualification of your successor.

WILLIAM McKINLEY.

To Mr. Ferdinand N. Shurtleff, New York, New York.

O. L. S."

Sixth. That on the sixteenth day of May, 1899, one Israel F. Fischer, whom the President of the United States had assumed to appoint and to commission as a general appraiser of merchandise,

but whose nomination never has been made to nor acted upon by the Senate of the United States, appeared at the office in the city of New York of the general appraisers of merchandise mentioned in said act of June 10, 1890, and claimed to be the successor of your petitioner as such general appraiser of merchandise, and has been permitted by the other general appraisers to take part in the discharge of the functions of that office; that said Israel F. Fischer on the twelfth day of May, 1899, took the necessary oaths to qualify him to discharge these functions, had his appointment been legal and valid; but the petitioner avers that at the time of the said appointment, commissioning, and taking of the said oaths by said Fischer, and on the sixteenth of May, 1899, when he claimed to succeed the petitioner, there were (including your petitioner) nine general appraisers of merchandise, the full number allowed by law; that there was no vacancy in that office; that your petitioner then was, and still is, one of the nine general appraisers authorized by law, and has never been lawfully removed from, nor resigned, nor vacated said office.

5 Seventh. That since said sixteenth day of May, 1899, hitherto the petitioner has attended at said office of the general appraisers of merchandise, in the city of New York, ready and willing to discharge the functions of said office, and to perform any and all duty pertaining thereto, and has not done any other business, nor has he done any other business since his appointment to said office in July, 1890.

Eighth. That by immemorial usage in the Government service, and by law, the petitioner and all general appraisers of merchandise (as well as other officers and employees of the United States) have been entitled to receive the salary appertaining to the office at the end of and for each calendar month, and have so received them, except when, for convenience of the officer and at his request, the salary has been advanced and paid at shorter intervals; that on the eighth day of June, 1899, this petitioner made out his voucher and receipt in the customary and prescribed form, accompanied by the oaths required by law, including section 1790 of the Revised Statutes, and by the rules and regulations of the Treasury Department, for three hundred and seven dollars and sixty-nine cents ($307.69) as salary from May 15th to June 1, 1899, as such general appraiser of merchandise, and transmitted the same to the Treasury Department for payment, in the usual and ordinary method, with the customary letter of transmittal of that date, last named, a copy of which voucher is hereto annexed, marked Exhibit A, and made part of this petition; that he was then and

6 thereupon rightfully entitled to receive and ought to have been paid the sum mentioned ($307.69) as salary for the period for which it was claimed by him; but that, upon the fourteenth day of June, 1899, the petitioner received from the Treasury Department a rejection of his said claim for salary, not because of any defect or insufficiency of form in his said voucher, receipt, verification and supporting and accompanying affidavit, but for the reason assigned in said rejection, which was by letter of this tenor:

"TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *June* 13, 1899.

Mr. Ferdinand N. Shurtleff, # 641 Washington street, New York, New York.

SIR: Your voucher for services as general appraiser from May 16th to 31st, 1899, inclusive, has been disapproved for the reason that your successor qualified in that position on May 12th, and has received compensation for the period covered by the above-mentioned voucher.

Respectfully yours, O. L. SPAULDING,
Assistant Secretary."

Ninth. That in the exercise of lawful authority there has been prepared in the Treasury Department, by order of the Secretary, a book and tables, which is distributed by it among, and a copy delivered to each of, the disbursing officers of the United States charged with the payment of the salaries and compensation of the several officers and employees of the Government, for the guidance of such disbursing officers in making such payments, showing the sum to be paid monthly on account of the annual salary of every Government officer and employee, or for the shorter period should the salary or compensation be for a less period than one month;
7 that the proportional salary and compensation accruing and due to your petitioner for the period between May 15 and June 1, 1899, exclusive of those days, according to said prescribed book and tables, was three hundred and seven dollars and sixty-nine cents.

Tenth. That under the twelfth section of the act of June 10, 1890, and according to its intent, no general appraiser of merchandise appointed under and by virtue of that section is removable from that office except for one or more of the causes in said section specified, to wit, inefficiency, neglect of duty, or malfeasance in office; that the petitioner, from the date of his acceptance of and qualification for said office, in July, 1890, hitherto has efficiently, attentively, honestly, and faithfully performed and discharged every duty devolved upon him in said office; that during that period he has never been guilty of nor justly chargeable with (nor, so far as he knows or can ascertain, charged with) either inefficiency, neglect of duty, or malfeasance in office; that the President of the United States has not declared (and upon information and belief the petitioner further alleges that the President has not ascertained) the petitioner to be or to have been in any respect either inefficient, neglectful of duty, or guilty of malfeasance in office, nor has the President assigned, as a cause and ground of his said attempted removal of your petitioner from said office, either the petitioner's inefficiency, neglect of duty, or malfeasance in office; but the President has assumed himself to have and to exercise
8 the right of removing your petitioner from his said office arbitrarily, of his own good will and pleasure, without either the existence or assignment of either of the three causes of

emoval above mentioned and in said section specified, or of any other ust and lawful cause; and your petitioner avers that such attempted emoval of him from his said office, without the existence or assignnent of either of the three causes in said section specified, and without the existence of any just and lawful cause, was not and never has been consented to or acquiesced in by your petitioner, who has ever objected to and denied the validity of such executive action as s hereinbefore mentioned, and such attempted removal of your petitioner from his said office without statutory or other just cause either existing or assigned was and is illegal, null, and void, and did not effect the removal of your petitioner from his said office of general appraiser of merchandise, nor deprive him of nor affect his right to the salary attached to the incumbency of said office, nor of his right to be permitted to perform and discharge the functions of that office as he is ready and willing to do, and has constantly attended the offices of the general appraisers for that purpose.

Eleventh. That the before-mentioned request contained in your petitioner's reply, dated February 21, 1899, to the letter of February 2, 1899, from the Secretary of the Treasury—*i. e.*, that your petitioner might be informed if any and what charges had been made against him in his relation to his said office—has never been complied with nor noticed; and upon information and belief your petitioner avers that no charges against your petitioner were ever made to or heard or determined by or in behalf of the President of the United States, and that the attempted removal of your petitioner from his said office, as aforesaid, was without any cause or charge of wrong-doing, inefficiency, or neglect of duty in his said office, and was for some reasons disconnected with the conduct in office of your said petitioner, which he is not sufficiently informed of to specify more particularly.

Twelfth. The petitioner avers that he was and is entitled to the salary of and accruing to him as a general appraiser of merchandise, appointed as aforesaid, for the five months of June, July, August, September, and October, 1899, to wit, to the sum of five hundred and seventy-six dollars and ninety cents for said month of June, five hundred and eighty-nine dollars and seventy cents for said month of July, five hundred and eighty-nine dollars and seventy cents for said month of August, five hundred and seventy dollars and sixty cents for said month of September, and five hundred and eighty-nine dollars and seventy cents for said month of October, amounting to twenty-nine hundred and sixteen dollars and sixty cents, which, with the aforesaid sum of three hundred and seven dollars and sixty-nine cents due him for the last sixteen days of May, 1899, makes up an aggregate of three thousand two hundred and twenty-four dollars and twenty-nine cents ($3,224.29), all of which is due from the United States to your petitioner and is in no part paid; that after the close of the several months above mentioned he has forwarded to the Treasury Department the voucher for his services (as such appraiser) for each of the preceding months, supported by the required affidavit and in the established form, dates and amounts excepted, similar to that for the last sixteen days of May hereto

attached as an exhibit; that all of said vouchers (except that for October, not yet returned, but which your petitioner, upon information and belief, states will be returned to him unpaid) have been returned to your petitioner with the statement of the department (in substance and effect) that the sums and salary demanded by your petitioner had been paid to the person (said Fischer) whom the department recognized as your petitioner's successor, though your petitioner alleges that no person has legally succeeded him in said office nor become entitled to the salary and sums so demanded by him, payment whereof to him has been and still is refused by the United States.

Thirteenth. The petitioner therefore alleges he is entitled to receive from the United States his salary as a general appraiser of merchandise from the fifteenth of May, 1899, to the first day of November, 1899, exclusive, at the rate provided by law, amounting to the aforesaid sum of three thousand two hundred and twenty-four dollars and twenty-nine cents ($3,224.29).

Wherefore he prays judgment against the United States for said sum of three thousand two hundred and twenty-four dollars and twenty-nine cents.

FERDINAND N. SHURTLEFF.

11 SMITH & BARKER,
Attorneys for Petitioner, 120 *Broadway, N. Y.*

J. G. CARLISLE,
EDWIN B. SMITH, *Of Counsel.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Ferdinand N. Shurtleff, of the city of New York, being duly sworn, says that the statements contained in the foregoing petition are true; that no assignment or transfer of the claim set forth in the above petition or of any part thereof or interest therein has ever been made at any time.

FERDINAND N. SHURTLEFF.

Sworn to before me this 2nd day of November, 1899.
[SEAL.] M. LAWSON DYER,
Notary Public (63), *New York County, N. Y.*

12 II.—*Traverse. Filed December* 11, 1900.

December Term, A. D. 1900.

FERDINAND N. SHURTLEFF }
vs. } No. 21524.
THE UNITED STATES. }

And now comes the Attorney General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney General.

13 III.—*Findings of Fact and Conclusion of Law. Filed January* 28, 1901.

FERDINAND N. SHURTLEFF
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following findings of fact:

I.

July 22, 1890, the claimant, who had been nominated on the 17th day of that month to be one of the general appraisers of merchandise under act of June 10, 1890, ch. 407, which nomination was consented to on the following day by the Senate, was commissioned to be such general appraiser of merchandise. He accepted said office and took the oath required to qualify him to discharge the duties of that office on the 24th day of July, 1890.

II.

Under instructions from the Treasury Department the claimant met the other members of the board for the purpose of organization August 1, 1890; and from that date continued to perform the duties and discharge the functions of a general appraiser of merchandise, without let or hindrance prior to May 15, 1899, up to which last-named date he has been paid the salary attached by law to that office.

III.

January 17, 1899, a letter was addressed to the claimant, as follows:

"TREASURY DEPARTMENT,
"SECRETARY DIVISION OF APPOINTMENTS,
"WASHINGTON, D. C., *January* 17, 1899.

"SIR: The President deems it his duty to make some changes in the personnel of the board of general appraisers. With this in view, he directs me to request you to send to him your resignation, to take effect at his pleasure.

"Respectfully, yours, L. J. GAGE, *Secretary.*

"Mr. Ferdinand N. Shurtleff, United States general appraiser, New York, N. Y."

To which request the claimant refused to accede, and demanded that he be furnished with a copy of any charges preferred against him, and that he be given an opportunity to be heard in his own defense.

14 Thereafter the claimant continued to perform the duties of his office, and on May 3, 1899, the following communication was addressed to him:

"EXECUTIVE MANSION,
"WASHINGTON, D. C., *May* 3, 1899.

"SIR: You are hereby removed from the office of general appraiser of merchandise, to take effect upon the appointment and qualification of your successor.

"WILLIAM McKINLEY.

"Mr. Ferdinand N. Shurtleff, New York, N. Y."

IV.

The claimant has never resigned said office, nor acquiesced in any attempted removal therefrom, but he claims still to be a general appraiser of merchandise, and to be entitled to the salary attached to that office.

V.

The claimant has never been notified or informed of any charges made against him, either of inefficiency, neglect of duty, or malfeasance in office, and knows of no cause for his removal from said office having been ascertained or assigned by the President of the United States.

VI.

Since qualifying for and entering upon said office the claimant has not been engaged in any other business.

VII.

Ever since May 15, 1899, claimant has been ready and willing and offered to discharge the duties of said office.

VIII.

Claimant has not been paid any salary attaching by law to said office since May 15, 1899.

IX.

Claimant has made (monthly) demand upon the Treasury Department for the salary attaching to said office, from May 15 to November 1, 1899, which demand has not been complied with, but denied.

X.

On May 2, 1899, an appointment was made during the recess of the Senate to fill the vacancy caused by the removal of claimant from the office of general appraiser of merchandise, said appoint-

ment to be in effect until the end of the next session of the Senate of the United States. The appointee under that commission took the oath of office and entered upon the duties thereof on May 12, 1899, and has received pay as such officer, beginning on May 16, 1899, up to the present time. On December 15, 1899, the said successor was nominated to the Senate, and the nomination to that office was confirmed on January 17, 1900. Said successor was commissioned by the President, under said confirmation, on January 22, 1900. He took the oath of office under said appointment on January 26, 1900, and since that time has remained in the office to which he was so appointed.

XI.

If the claimant is entitled to recover on the foregoing facts, the amount due is $3,224.29.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover, and his petition is therefore dismissed.

15 IV.—*Opinion of the Court.*

PEELLE, J., delivered the opinion of the court:

The claimant seeks to recover under the act of June 10, 1890, ch. 407, sec. 12 (26 Stat. L., p. 136), the salary as general appraiser of merchandise from May 15 to November 1, 1899; and by his action questions the right of the President of the United States to remove him from said office without first having ascertained and assigned as his reasons therefor some one or more of the grounds set forth in said action.

That part of the section material to the question reads:

"That there shall be appointed by the President, by and with the advice and consent of the Senate, nine general appraisers of merchandise, each of whom shall receive a salary of seven thousand dollars a year. Not more than five of such general appraisers shall be appointed from the same political party. They shall not be engaged in any other business, avocation, or employment, and may be removed from office at any time by the President for inefficiency, neglect of duty, or malfeasance in office." * * *

Story on the Constitution, vol. 2, sec. 1537, 4th ed., says:

* * * "As, however, the tenure of office of no officers, except those in the judicial departments, is, by the Constitution, provided to be during good behavior, it follows, by irresistible inference, that all others must hold their offices during pleasure, unless Congress shall have given some other duration to their office." * * *

The claimant's contention is, that while he concedes the power of the President to remove appraisers from office at any time for the causes specified in the act, he at the same time insists that "if neither inefficient, neglectful, nor guilty of misdoing in office, they were not

to be removed by the President at any time. That is, there was to be no removal, by any power—the President alone, or with the concurrence of the Senate—except for cause, upon one or the other of the specified grounds."

In the case of Parsons *v.* The United States (167 U. S., 324, 343), affirming the judgment of this court (30 C. Cls. R., p. 222) where a district attorney had been appointed under Revised Statutes, section 769, for a term of four years, it was ruled that the repeal of the tenure of office act, March 2, 1867, "was again to concede to the President the power of removal if taken from him by the original tenure of office act, and by reason of the repeal, to thereby enable him to remove an officer when in his discretion he regards it for the public good, although the term of office may have been limited by the words of the statute creating the office."

The claimant's counsel, however, contends that the statute under which the district attorney was appointed for the term of four years "was not intended to restrict removals," while the statute under which the claimant was appointed "was so intended," and for that reason, he says, the Parsons case has no application.

Conceding that the purpose of the act was to restrict the President in the exercise of his power of removal to the causes specified therein, it does not follow that before he can act he must assign such cause as the basis of his action, nor does the statute so provide.

Under the act it is for the President alone to determine whether one of the specified causes furnishes a basis for his action. No method of procedure for that purpose or notice thereof to the claimant is prescribed in the statute. Hence, the method of ascertaining such causes is within the discretion of the President, and that being so, no legal liability attaches to the Government for the failure of the President to assign the particular statutory cause for his action.

The claimant had been informed through the Secretary of the Treasury, as set forth in finding III, that "the President deems it his duty to make some changes in the personnel of the board of general appraisers," and to that end the claimant was requested to tender his resignation, which he declined to do, and thereafter he was removed.

The changes which "the President deems it his duty to make" the court must assume were such as the law imposed upon him; and having followed that duty by the removal of the claimant and the appointment, with the concurrence of the Senate, of his successor, it must be presumed that the President was guided by the statute in respect to the causes for which the claimant was removed, though no particular cause therefor was assigned, and that therefore the claimant ceased to be an officer under that statute.

This construction, while it gives force to the statute, at the same time recognizes the power of the President, as the chief executive head, to remove from office at any time an officer thereunder whenever in his judgment the causes specified therein exist, without having to assign his reasons therefor.

The petition is therefore dismissed.

16 V.—*Dissenting Opinion.*

HOWRY, J., dissenting:

The respect which a co-ordinate branch of the Government owes to another forbids the reflection of any improper motive in plaintiff's removal, but in the means taken to secure it and the manner of its accomplishment rather does it seem that, while selecting a more suitable person to fill plaintiff's place, the action of the President has been for the purpose of putting to the test his right to make the removal, the same as in the case of others holding office at his pleasure.

That it is competent for Congress to limit the presidential power of removal seems well enough settled to assume such right. The power of removal as incident to the power of appointment is considered by the Supreme Court to be a sound and necessary rule, in the absence of all constitutional provision or statutory regulation. (*In re* Hennen, 13 Pet., 249.)

The assignment of a four years' term under section 769 of the Revised Statutes did not sustain a claim for an absolute right to hold the full four years. (Parsons *v.* United States, 30 C. Cls. R., 245; 167 U. S. R., 343.) While the commission was made to expire at the end of four years, the provisions of the law did not cut off the President's power of removal during the term at his pleasure.

All that we may extract from the Parsons case is the question of the true construction of the language of the law under which Parsons was appointed. The customs administrative act of 1890 is the will of Congress of a totally different kind. The function intended for it to perform circumscribes power to remove to those things only which may be assigned.

Assuming that Congress can limit the power of removal, I think it should affirmatively appear here that some one at least of the three conditions named in the act under which plaintiff held had arisen when plaintiff was removed. Otherwise his displacement must be treated as one made at pleasure. If any reason existed it could be easily assigned; if not assigned, the removal is arbitrary, pure and simple. In such case the statute is useless; it means nothing.

Without the assignment of a cause, or the necessity to assign any, the dismissed official is left in doubt how or in what manner he has disqualified himself. He goes out not only with a stigma upon his official conduct, but understanding that he has committed a wrong of some kind. This is unjust, against the spirit of our institutions in depriving him of the nature of the accusation against him and of any chance to explain, and in effect puts such an official under duress upon any call for his resignation. Thus the will of the legislative is displaced for the will of the executive branch of the Government. I cannot accept any such result until the court of last resort shall so determine.

It is true that under the act it is for the President alone to determine which of the specified causes furnishes the basis of removal

and that no method of procedure for that purpose is prescribed in the statute. So much the greater reason for the precedents of the common law to be followed, or some mode of procedure adopted consistent with the public interests and the terms of the law which shall give the discharged official the privileges of the common malefactor.

The presumption that the President is guided by the statute in making the removal is merely the presumption that the king can do no wrong. This presumption has no such place under our institutions, and should not prevail against the presumption of innocence which attaches to the humble citizen holding the subordinate office against the assertion of the authority of the more eminent citizen exercising the functions of the greater place.

17 VI.—*Judgment of the Court.*

FERDINAND N. SHURTLEFF
vs.
THE UNITED STATES. } No. 21524.

At a Court of Claims held in the city of Washington on the 28th day of January, A. D. 1901, judgment in the above-entitled case was ordered to be entered as follows:

The court, upon due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant, the said Ferdinand N. Shurtleff, be dismissed.

BY THE COURT.

18 VII.—*Application for and Allowance of Appeal.*

FERDINAND N. SHURTLEFF
vs.
UNITED STATES. } No. 21524.

From the judgment rendered in the above-entitled cause upon the twenty-eighth day of January, 1901, in favor of the defendants, dismissing claimant's petition herein, the claimant, by Edwin B. Smith, his attorney, on the 21st day of March, 1901, takes and makes application for and gives notice of an appeal to the Supreme Court of the United States.

FERDINAND N. SHURTLEFF,
By EDWIN B. SMITH, *His Attorney.*

Filed March 21, 1901.

At a Court of Claims held in the city of Washington on the 21st day of March, 1901, the foregoing application for appeal was allowed as prayed for.

BY THE COURT.

19 In the Court of Claims.

FERDINAND N. SHURTLEFF
vs.
UNITED STATES. } No. 21524.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the opinion of the court and of the dissenting opinion, of the judgment of the court dismissing the petition, and of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 22d day of March, A. D. 1901.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No., 18,105. Court of Claims. Term No., 620. Ferdinand N. Shurtleff, appellant, *vs.* The United States. Filed April 5, 1901.